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UNIVERSITY MEDICAL CENTER

OF SOUTHERN NEVADA

**UNITED STATES DISTRICT COURT****DISTRICT OF NEVADA**LEISA WHITTUM; and NICOLE  
KILBURN,

Plaintiffs,

v.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA,

Defendant.

**CASE NO.: 2:21-CV-01777-MMD-EJY****STIPULATION AND PROTECTIVE  
ORDER**

Subject to the approval of this Court, the parties, by and through their attorneys of record, hereby stipulate to the following Protective Order:

The complaint in this matter (Plaintiffs' First Amended Complaint, ECF #15) includes class-action allegations, whereby Plaintiffs assert to be representatives for a putative class of unnamed individuals whom Plaintiffs contend are entitled to recover damages for causes of action within the operative complaint alleging that putative class members', "personal data was procured or potentially prepared by third parties as a result of the data breach due to UMC's failure to secure its internal systems of record." (*Id.*)

The parties acknowledge Defendant is a hospital, and that the operative complaint identifies putative class members as patients or others whose data is required to be protected from disclosure, and for which the instance of Plaintiffs' operative complaint and the procedures of the litigation may not create authorization for disclosure. The parties also acknowledge that

1 discoverable information that may pertain to this matter may be not previously published or  
2 generally available pursuant to legitimate interests and protection of sensitive information that  
3 may be protected personal information, proprietary, trade secrets, subject to non-disclosure  
4 agreements, important to safety and security, and intended to assist preservation of  
5 confidentiality, privacy and/or protection from disclosure pursuant to law and/or agreement. The  
6 parties therefore agree to the terms and substance of this stipulated protective order in an effort  
7 to facilitate discovery while protecting any sensitive information from improper disclosure.

8 Based thereon and to expedite the flow of discovery, facilitate the prompt resolution of  
9 disputes over confidentiality and protection of information of others, and to adequately protect  
10 material claimed to be confidential, private, sensitive and/or subject to protection, and ensure  
11 that protection is afforded to Defendant, UNIVERSITY MEDICAL CENTER OF SOUTHERN  
12 NEVADA (hereinafter referred to as “Defendant”) for disclosures or productions it may make  
13 or be required to make, and pursuant to the Court’s authority under Federal Rule of Civil  
14 Procedure 26(c), it is hereby **ORDERED** that this Protective Order shall govern the disclosure,  
15 handling and disposition disclosure and productions by Defendant as follows:

16 1. **Application.** This Protective Order shall govern any disclosure or production  
17 in this case that contains confidential or private information, designated as containing  
18 “Confidential Information” as defined herein and produced in connection with this litigation by  
19 any person or entity [hereinafter referred to as the “producing party”], whether in response to a  
20 discovery request, subpoena or otherwise, to any other person or entity [hereinafter referred to  
21 as the “receiving party”], regardless of whether the person or entity producing or receiving such  
22 information is a party to this litigation.

23 2. **Definitions.**

24 2.1 Confidential Information. “Confidential Information” shall mean and  
25 include any and all of the following:

26 (a) information supplied in any form, or any portion thereof, that identifies an  
27 individual or subscriber in any manner and relates to the past, present, or future care, services,  
28 or supplies relating to the physical or mental health or condition of such individual or subscriber,

1 the provision of health care to such individual or subscriber, or the past, present, or future  
2 payment for the provision of health care to such individual or subscriber. Confidential Health  
3 Information shall constitute a subset of Confidential Information, and shall be designated as  
4 Confidential Information and subject to all other terms and conditions governing the treatment  
5 of Confidential Information, as set forth herein. Confidential Health Information shall include,  
6 but is not limited to, claim data, claim forms, grievances, appeals, or other documents or records  
7 that contain any patient health information required to be kept confidential under any state or  
8 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to HIPAA (see [45](#)  
9 [C.F.R. §§ 164.501](#) & [160.103](#)), and the following subscriber, patient, or member identifiers  
10 including but not limited to:

- 11 (1) names;
- 12 (2) all geographic subdivisions smaller than a State, including street  
13 address, city, county, precinct, and zip code;
- 14 (3) all elements of dates (except year) for dates directly related to an  
15 individual, including birth date, admission date, discharge date, age, and  
16 date of death;
- 17 (4) telephone numbers;
- 18 (5) fax numbers;
- 19 (6) electronic mail addresses;
- 20 (7) social security numbers;
- 21 (8) medical record numbers;
- 22 (9) health plan beneficiary numbers;
- 23 (10) account numbers;
- 24 (11) certificate/license numbers;
- 25 (12) vehicle identifiers and serial numbers, including license plate  
26 numbers;
- 27 (13) device identifiers and serial numbers;
- 28 (14) web universal resource locators (“URLs”);

1 (15) internet protocol (“IP”) address numbers;

2 (16) biometric identifiers, including finger and voice prints;

3 (17) full face photographic images and any comparable images; and

4 (18) any other unique identifying number, characteristic, or code.

5 (b) includes but is not limited to: information that is confidential proprietary  
6 information, trade secrets, or information technology, that is related to and important for safety  
7 and security, that is intended to assist preservation of confidentiality, privacy and/or protection  
8 from disclosure pursuant to law and/or agreement, security policies, practices and procedures,  
9 that is related to personnel compensation, evaluations and other  
10 employment/engagement/contracting information, or that is confidential proprietary information  
11 of the parties to this action or others the parties have or had relationships for purposes such as  
12 business, professional services, regulatory review/oversight, reporting, licensing, certification,  
13 approval, and/or endorsement. 2.2 Documents. As used herein, the term “document” or  
14 “documents” includes all records of any kind, manuals, policies and procedures, including,  
15 without limitation, those produced in written, recorded, photographic, electronic, e-mail, video  
16 or audio format.

17 2.2 Protected Health Information. “Protected Health Information” shall mean  
18 individually identifiable health information created, received, maintained, or transmitted in any  
19 medium, including, without limitation, all information, data, documentation, and materials,  
20 including without limitation, demographic, medical and financial information, that relates to the  
21 past, present, or future physical or mental health or condition of an individual; the provision of  
22 health care to an individual; or the past, present, or future payment for the provision of health  
23 care to an individual; and that identifies the individual or with respect to which there is a  
24 reasonable basis to believe the information can be used to identify the individual.

25 2.3 Electronic Health Information. “Electronic Health Information” shall  
26 mean “Protected Health Information”, as defined in Section 2.3 herein, which is transmitted by  
27 Electronic Media (as defined in the HIPAA rules) or maintained in Electronic Media.  
28

1           3.     **Initial Designation.**

2                 3.1     Good Faith Claims. Claims of confidentiality will be made only with  
3 respect to documents or information the asserting party has a good faith belief are within the  
4 definition set forth in subparagraph 2.1 of this Protective Order. Objections to such claims made  
5 pursuant to paragraph 5, below, shall also be made only in good faith.

6                 3.2     Produced Documents. A party producing documents or information that  
7 it believes constitute or contain Confidential Information or Protected Health Information, as  
8 defined herein shall state that the material is being produced under this Protective Order by  
9 describing the documents or materials to be treated as confidential in writing, by page or bates  
10 number wherever possible, and/or shall produce copies bearing a label that contains or includes  
11 language substantially identical to one of the following, as applicable:

12                                 **CONFIDENTIAL INFORMATION**

13                                 **PROTECTED HEALTH INFORMATION**

14                 The applicable label shall be affixed in a manner that does not obliterate or obscure the  
15 contents of the copies. If any person or party makes copies of documents designated as  
16 containing Confidential Information or Protected Health Information, the copying person or  
17 party shall mark each such copy as containing Confidential Information or Protected Health  
18 Information in the same form as the Confidentiality notice on the original document.

19                 A party producing documents that are stored on electronic, magnetic, optical or other  
20 non-paper media, such as compact discs, DVD's, video tapes and audio tapes (collectively, "data  
21 storage devices") shall designate the data storage device as containing Confidential Information,  
22 or Protected Health Information by affixing a label or stamp to the data storage device in the  
23 manner described above at the time copies of such data storage devices are produced. If the  
24 receiving party or other persons or entities to whom disclosure is authorized pursuant to  
25 subparagraph 7.1 make a copy of any data storage device designated by the producing party as  
26 containing Confidential Information, Protected Health Information, the receiving party or other  
27 authorized person shall mark each such copy as containing Confidential Information, or  
28 Protected Health Information in the same form as the confidentiality notice on the original data

1 storage device produced. If the receiving party or other authorized person prints out or otherwise  
2 makes copies of the documents or information stored on such data storage device, the receiving  
3 party or other authorized person shall mark each page so copied with the label or stamp specified  
4 in subparagraph

5 3.3 Documents and/or Information Already Produced. Documents and/or  
6 information already produced shall be subject to the terms of this Order.

7 3.4 Deposition Transcripts. Within ten (10) days after the receipt of a  
8 deposition transcript, a party may inform the other parties to the action of the portions of the  
9 transcript that it wishes to designate as or containing Confidential Information or Protected  
10 Health Information. Until such time has elapsed, deposition transcripts in their entirety are to be  
11 considered as Confidential Information or Protected Health Information. All parties in  
12 possession of a copy of a designated deposition transcript shall mark it appropriately. The court  
13 reporter shall comply with and be bound by this Order. In the event that the party furnishing  
14 deposition testimony designates portions or all of that testimony as Confidential Information or  
15 Protected Health Information, the court reporter shall separately transcribe and submit under  
16 seal, to counsel for the parties, transcriptions of the testimony so designated. Confidential  
17 transcripts of deposition testimony shall be treated the same and afforded the same protections  
18 as other documents designated as Confidential Information or Protected Health Information  
19 under this Order.

20 3.5 Multi-page Documents.. If a party wishes to an integrated or multi-page  
21 document as Confidential Information or Protected Health Information, it should designate such  
22 portions of the document and place the label specified in subparagraph 3.2 on each page of the  
23 document containing Confidential Information.

24 3.6 Disclosures/Identification/Responses. To protect the foregoing  
25 information during any disclosures, identifications and/or responses that may be required or  
26 occur, Defendant may elect to replace names and personal identification numbers of putative  
27 class members with a unique number that may be assigned for the purpose of this litigation for  
28 identification of the corresponding individual.

1           4.     **Designations by Another Party.**

2           4.1     Notification of Designation. If a party other than the producing party  
3 believes that a producing party has produced a document that contains or constitutes Confidential  
4 Information or Protected Health Information of the non-producing party, the non-producing  
5 party may designate the document as Confidential Information or Protected Health Information  
6 by so notifying all parties in writing within fourteen (14) days of service of the document.

7           4.2     Return of Documents; Non-disclosure. Whenever a party other than the  
8 producing party designates a document produced by a producing party as Confidential  
9 Information or Protected Health Information in accordance with subparagraph 4.1, each party  
10 receiving the document shall either add the Confidential Information or Protected Health  
11 Information designation in accordance with subparagraph 3.2 or substitute a copy of the  
12 document bearing such designation for each copy of the document produced by the producing  
13 party. Each party shall destroy all undesignated copies of the document or return those copies to  
14 the producing party, at the direction of the producing party. No party shall disclose a produced  
15 document to any person, other than the persons authorized to receive Confidential Information  
16 or Protected Health Information, under subparagraph 7.1, until after the expiration of the  
17 fourteen (14) day designation period specified in subparagraph 4.1. If during the fourteen (14)  
18 day designation period a party discloses a produced document to a person authorized to receive  
19 Confidential Information or Protected Health Information, under subparagraph 7.1, and that  
20 document is subsequently designated as Confidential Information or Protected Health  
21 Information, in accordance with subparagraph 4.1, the disclosing party shall cause all copies of  
22 the document to be destroyed or returned to the producing party, at the direction of the producing  
23 party. The party may thereafter disclose a copy of the document that has been marked as  
24 Confidential Information or Protected Health Information by the designating party, in  
25 accordance with subparagraphs 3.2 and 7.1.

26           5.     **Objections to Designations.** Any party objecting to a designation of Confidential  
27 Information or Protected Health Information, including objections to portions of designations of  
28 multi-page documents, shall notify the designating party and all other parties of the objection in

1 writing within seven (7) days. This notice must specifically identify each document that the  
2 objecting party in good faith believes should not be designated as Confidential Information or  
3 Protected Health Information and provide a brief statement of the grounds for such belief. In  
4 accordance with the Federal Rules of Civil Procedure governing discovery disputes, the  
5 objecting and the designating parties thereafter shall confer within seven (7) days after the date  
6 of such objection in an attempt to resolve their differences. If the parties are unable to resolve  
7 their differences, the objecting party shall have seven (7) days after the conference concludes to  
8 file with the Court a motion to remove the Confidential Information or Protected Health  
9 Information . Where a party authored, created, owns, or controls a document, information or  
10 other material that another party designates as Confidential Information or Protected Health  
11 Information , the party that authored, created, owns, or controls the Confidential Information or  
12 Protected Health Information may so inform the objecting party and thereafter shall also be  
13 considered a designating party for purposes of this paragraph.

14 All documents initially designated as Confidential Information or Protected Health  
15 Information shall be treated as such in accordance with this Protective Order unless and until the  
16 Court rules otherwise. If the Court rules that a designation should not be maintained as to a  
17 particular document, the producing party shall, upon written request by a party, provide that  
18 party a copy of that document without the designation described in subparagraph 3.2.

19 If an objecting party elects not to make such a motion with respect to documents within  
20 seven (7) days after the conference, information or other materials to which an objection has  
21 been made, the objection shall be deemed withdrawn. The designating party shall have seven (7)  
22 days to respond to the objecting party's motion. If no response is filed by the designating party  
23 within seven (7) days, the designating party shall be deemed to have consented to the objecting  
24 party's motion.

25 6. **Custody.** All Confidential Information or Protected Health Information and any  
26 and all copies, extracts and summaries thereof, including memoranda relating thereto, shall be  
27 retained by the receiving party in the custody of counsel of record, or by persons to whom  
28 disclosure is authorized under subparagraph 7.1.



1           7.     **Handling Prior to Trial.**

2           7.1     Authorized Disclosures. Confidential Information or Protected Health  
3 Information shall be disclosed by the receiving party only to the following persons:

- 4           a. Counsel for the parties in this litigation, including their associates, clerks,  
5           paralegals, and secretarial personnel;
- 6           b. Qualified persons (such as court reporters) taking testimony in this litigation  
7           involving such Confidential Information or Protected Health Information, and  
8           necessary stenographic, videotape and clerical personnel;
- 9           c. Experts and their staff who are retained by counsel as expert witnesses for a  
10          party in this litigation;
- 11          d. Experts and their staff who are consulted by counsel for a party in this  
12          litigation;
- 13          e. Parties to this litigation, limited to the named party and, if that party is a  
14          corporate entity, a limited number of employees of the corporate entity and  
15          its insurers;
- 16          f. Designated in-house counsel and a limited number of assistants,  
17          administrative or otherwise;
- 18          g. Outside vendors employed by counsel for copying, scanning and general  
19          handling of documents;
- 20          h. Any person of whom testimony is taken regarding the Confidential  
21          Information or Protected Health Information, except that such person may  
22          only be shown Confidential Information or Protected Health Information  
23          during his/her testimony, and may not retain a copy of such Confidential  
24          Information or Protected Health Information; and
- 25          i. This Court and this Court's staff, subject to the Court's processes for filing  
26          materials under seal.
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- 28

1           Such disclosures are authorized only to the extent necessary to investigate, prosecute, or  
2 defend the litigation.

3           Confidential Information or Protected Health Information may not be disclosed to  
4 persons under subparagraphs (c) or (d) until the receiving party has obtained a written  
5 acknowledgment from the person receiving Confidential Information or Protected Health  
6 Information, in the form of the Declaration attached hereto as Exhibit “A”, that they received a  
7 copy of this Protective Order and agree to be bound by it. A party who discloses Confidential  
8 Information or Protected Health Information in accordance with subparagraph 7.1 shall retain  
9 the written acknowledgment from each person receiving Confidential Information or Protected  
10 Health Information, shall maintain a list of all persons to whom a receiving party has disclosed  
11 Confidential Information or Protected Health Information and identify what documents have  
12 been disclosed, and shall furnish the written acknowledgments and disclosure list to opposing  
13 counsel as follows: (i) for a person under subparagraph (c), within thirty (30) days after the  
14 person signs the Declaration; and (ii) for a person under subparagraph (d), within thirty (30) days  
15 after the matter is finally concluded. A party who discloses Confidential Information or  
16 Protected Health Information in accordance with subparagraph 7.1 shall also furnish the written  
17 acknowledgements and disclosures list to the Court for in camera review upon its request or  
18 order. Furnishing the written acknowledgments and disclosure list to the Court shall not  
19 constitute a waiver of the attorney work product or attorney-client privilege. Disclosure of  
20 Confidential Information or Protected Health Information to the Court, including staff of same,  
21 shall be made in accordance with subparagraph 7.3 of this Protective Order.

22           The Parties acknowledge that information disclosed or produced in discovery, regardless  
23 of its designation under this Stipulated Protective Order, may contain personal and/or health  
24 information which is subject to the protections of the Health Insurance Portability and  
25 Accountability Act of 1996 (“HIPAA”), the applicable requirements of the Standards for Privacy  
26 of Individually Identifiable Health Information and its implementing regulations issued by the  
27 U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64; HIPAA Privacy  
28 Regulations), and NRS 603A.210, which protect the confidentiality of individually identifiable

1 personal and health information. The Parties and all third party signatories to this Agreement  
2 agree to take all measures necessary to comply with the requirements of these laws and any other  
3 applicable laws governing the privacy of personal and health information

4           7.2 Unauthorized Disclosures. All persons receiving Confidential  
5 Information Protected Health Information under the terms of this Protective Order are under the  
6 jurisdiction of the state courts and U.S. federal courts located in Nevada for all matters arising  
7 from the improper disclosure or use of such information. If Confidential Information or Protected  
8 Health Information is disclosed to any person other than in the manner authorized by this  
9 Protective Order, the party or person responsible for the disclosure, and any other party or person  
10 who is subject to this Protective Order and learns of such disclosure, shall immediately bring  
11 such disclosure to the attention of the designating party. Without prejudice to other rights and  
12 remedies of the designating party, the responsible party or person shall make every effort to  
13 obtain and return the Confidential Information or Protected Health Information and to prevent  
14 further disclosure on its own part or on the part of the person who was the unauthorized recipient  
15 of such information.

16           7.3 Court Filings. In the event any Confidential Information or Protected  
17 Health Information must be filed with the Court prior to trial, the proposed filing shall comply  
18 with the Federal Rules of Civil Procedure and the requirements set forth in *Kamakana v. City*  
19 *and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). In accordance with these rules and  
20 requirements, the proposed filing shall be accompanied by a motion to file the Confidential  
21 Information or Protected Health Information under seal and a proposed order, and the application  
22 and proposed order shall be directed to the judge to whom the Confidential Information or  
23 Protected Health Information is directed. This provision is applicable to briefs, memoranda, and  
24 other filings which quote the Confidential Information or Protected Health Information.

25           8. **Care in Storage.** Any person in possession of Confidential Information or  
26 Protected Health Information produced by another party shall exercise reasonable and  
27 appropriate care with regard to the storage, custody, copying, and use of such information to  
28 ensure that the confidential and sensitive nature of same is maintained.

1           9.     **Handling During Trial.** Confidential Information or Protected Health  
2 Information that is subject to this Order may be marked and used as trial exhibits by either party,  
3 subject to terms and conditions as imposed by the Court upon application by any party.

4           10.   **No Implied Waivers.** This Protective Order shall not be interpreted as a waiver  
5 of the right to object, under applicable law, to the furnishing of information in response to  
6 discovery requests or to object to a requested inspection of documents or facilities. Parties  
7 producing Confidential Information or Protected Health Information in this litigation are doing  
8 so only pursuant to the terms of this Protective Order. The taking of any action in accordance  
9 with the provisions of this Protective Order shall not be interpreted as a waiver of any claim or  
10 position or defense in this action, or any other actions. Review of the Confidential Information  
11 or Protected Health Information by counsel, experts, or consultants for the litigants in the Case  
12 shall not waive the confidentiality of the documents or objections to production or from  
13 otherwise objecting to discovery that it believes to be improper. The inadvertent, unintentional,  
14 or *in camera* disclosure of Confidential Information or Protected Health Information shall not  
15 be deemed a waiver in whole or in part, of any party's claims of confidentiality. Nothing herein  
16 shall be deemed to waive any applicable privilege or work product protection, nor shall an  
17 inadvertent disclosure of material protected by privilege or work product protection constitute a  
18 waiver of such privilege or protection. The Parties stipulate that this order is intended to and  
19 does conform with the requirements of Health Insurance Portability and Accountability Act of  
20 1996 ("HIPAA"), specifically but not limited to 45 CFR §164.512(e)(1)(ii)(A) and (e)(1)(v).  
21 Nothing contained in this Order and no action taken pursuant to it shall prejudice the right of any  
22 party to contest the alleged confidentiality, relevancy, authenticity, admissibility, or  
23 discoverability of the Confidential Information or Protected Health Information sought. The  
24 terms of this Order shall survive and remain in effect after the termination of this Case.

25           11.   **No Admission.** The designation of any item as Confidential Information or  
26 Protected Health Information shall not be construed as an admission that such material, or any  
27 testimony concerning such material, would be admissible in evidence in this litigation or in any  
28 other proceeding. Entering into, agreeing to, and/or producing or receiving Confidential

1 Information or Protected Health Information or otherwise complying with the terms of this Order  
2 shall not Operate as or constitute an admission by any party that any Confidential Information  
3 or Protected Health Information contains or reflects trade secrets, proprietary or commercially  
4 sensitive information, or any other type of confidential matter, or as or constitute an admission  
5 by any party that the restrictions and process set forth herein constitute adequate protection for  
6 any particular information deemed by such Producing Party to be Confidential within the  
7 meaning of section 2.1.

8 12. **Inadvertent Disclosure.** Issues regarding inadvertent disclosures shall be  
9 resolved under the provisions of FRCP 26. Notwithstanding the procedures herein, disclosures  
10 documents or other discovery materials produced and not designated as “CONFIDENTIAL”  
11 through mistake or inadvertence may be designated as Confidential Information or Protected  
12 Health Information upon notice of such mistake or inadvertence, with the Receiving Party  
13 reserving the right to assert, depending on the circumstances, that such later designation is  
14 improper. Disclosure (including production) of information that a Party or non-party later claims  
15 should not have been shall not automatically constitute a waiver of, or estoppel as to, any claim  
16 of attorney-client privilege, attorney work-product, or other ground for withholding production  
17 as to which the Producing Party would be entitled in the Case, any other litigation, or any other  
18 federal or state proceeding. This Order, as entered by the Court and agreed to by the Parties, is  
19 intended to provide protection consistent with the full protection afforded by Federal Rule of  
20 Evidence 502(d), providing that “A Federal court may order that the privilege or protection is  
21 not waived by disclosure connected with the litigation pending before the court—in which even  
22 the disclosure also is not a waiver in any other Federal or State proceeding.” Where a Producing  
23 Party has inadvertently produced a document which the Producing Party later claims should not  
24 have been produced because of privilege, the Producing Party may at any time require the return  
25 of any such document. A request for the return of any document shall identify the document by  
26 Bates number and the basis for asserting that the specific document (or portions thereof) is  
27 subject to the attorney-client privilege, the work product doctrine, or any other applicable  
28 privilege or immunity from discovery, the basis for asserting that the production was inadvertent,

1 and the date of discovery that there had been an inadvertent production. If a Producing Party  
2 requests the return, pursuant to this Paragraph, of any such document from another party, the  
3 party to whom the request is made shall within thirty (30) days return to the Producing Party all  
4 copies of the document within its possession, custody, or control, including all copies in the  
5 possession of experts, consultants, or others to whom the document was provided. In the event  
6 that only portions of the document contain privileged subject matter, the Producing Party shall  
7 substitute a redacted version of the document at the time of making the request for the return of  
8 the requested document. In the event the Receiving Party contests the claim of privilege or  
9 inadvertent production, the Receiving Party shall file a motion within thirty (30) days after return  
10 of the document to obtain a determination that the document is not privileged.

11 13. **Parties' Own Documents.** This Protective Order shall in no way restrict the  
12 parties in their use of their own documents or information, and nothing in this Protective Order  
13 shall preclude any party from voluntarily disclosing its own documents or information to any  
14 party or nonparty.

15 14. **Motion to Compel Production of Confidential Information.** If any third party  
16 subpoenas Confidential Information or Protected Health Information from a party to this action  
17 or moves to compel a party to this action to produce any such information, such party shall  
18 immediately notify the parties who originally produced and/or designated such information that  
19 a subpoena has been served or a motion has been made in order to allow the parties who  
20 originally produced and/or designated such information the opportunity to seek a protective  
21 order or oppose the motion or application. If, within thirty (30) days after receiving notice of a  
22 subpoena seeking Confidential Information or Protected Health Information from a receiving  
23 party, the party who originally produced and/or designated such information fails to move for a  
24 protective order, the party subject to the subpoena may produce said information. In addition, if  
25 a party is ordered to produce Confidential Information or Protected Health Information covered  
26 by this Protective Order, then notice and, if available, a copy of the order compelling disclosure  
27 shall immediately be given the parties who originally produced and/or designated such  
28 information. Nothing in this Protective Order shall be construed as requiring the party who is

1 ordered to produce such Confidential Information or Protected Health Information to challenge  
2 or appeal any order requiring the production of such information or to subject himself/herself to  
3 any penalty for non-compliance with any legal process or seek any relief from the Court.

4 15. **Modification.** In the event any party hereto seeks a Court order to modify the  
5 terms of this Protective Order, or seeks a protective order which incorporates the terms and  
6 conditions of this Protective Order said party shall make such request by written stipulation or  
7 noticed motion to all parties that must be served and filed in accordance with local court rules.

8 16. **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to  
9 whom disclosure was made agree to return all Confidential Information to the designating party  
10 within ninety (90) days of the conclusion of litigation between the parties, including final  
11 appellate action or the expiration of time to appeal or seek further review. In addition, counsel  
12 shall certify in writing that all such Confidential Information or Protected Health Information  
13 has been returned. Counsel for each party also shall contact each person to whom that party has  
14 provided a copy of any Confidential Information or Protected Health Information and request  
15 the documents be returned. In lieu of returning Confidential Information or Protected Health  
16 Information, the person or party in possession of such information may elect to destroy it. If the  
17 person or party in possession of Confidential Information or Protected Health Information elects  
18 to destroy it rather than return it, that person or party must notify the designating party in writing  
19 of the destruction of the information within ninety (90) days of the conclusion of litigation  
20 between the parties, including final appellate action or the expiration of time to appeal or seek  
21 further review.

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17. **Survival of the Terms of this Protective Order.** Even after the termination of this litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until a Designating Party states otherwise in writing or a court order otherwise directs.

DATED this 21st day of December 2022.

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By: /s/ Andrew C. Green

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DATED this 21<sup>st</sup> day of December 2022.

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**IT IS SO ORDERED.**

  
**U.S. MAGISTRATE JUDGE**

**Dated: December 22, 2022**